

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

SHAUN JERMAINE ESTES,

Defendant.

3:15-CR-015-LRH-VPC

ORDER

Before the Court is Defendant Shaun Jermaine Estes' ("Estes") ex-parte application for issuance of a subpoena pursuant to Federal Rule of Criminal Procedure 17(a) and 17(b), filed under seal. Doc. #24.<sup>1</sup> On September 4, 2015, the Court deferred consideration of Estes' subpoena application so that the United States could respond. Doc. #29. The United States filed a timely Response (Doc. #30), to which Estes replied (Doc. #31).

**I. Legal Standard**

The party seeking pretrial production of evidence bears the burden to show good cause for production before trial. *United States v. Sellers*, 275 F.R.D. 620, 623 (D. Nev. 2011). Federal courts generally follow the standard established by *United States v. Iozia*, 13 F.R.D. 335 (S.D.N.Y. 1952), to determine whether the moving party has established good cause for production. *United States v. Nixon*, 418 U.S. 683, 699 (1974). *Iozia* provides that good cause for pre-trial production

<sup>1</sup> Refers to the Court's docket number.

1 requires a showing:

2 (1) That the documents are evidentiary and relevant;

3 (2) That they are not otherwise procurable by the defendant reasonably in advance of  
4 trial by the exercise of due diligence;

5 (3) That the defendant cannot properly prepare for trial without such production and  
6 inspection in advance of trial and the failure to obtain such inspection may tend  
7 unreasonably to delay the trial;

8 (4) That the application is made in good faith and is not intended as a general fishing  
9 expedition.

10 13 F.R.D. at 338.

11 The party seeking pretrial production bears the burden of establishing relevancy,  
12 admissibility, and specificity. *Nixon*, 418 U.S. at 700. Conclusory allegations of relevance and  
13 admissibility are insufficient to meet the moving party's burden. *Sellers*, 275 F.R.D. at 623-24  
14 (citing *United States v. Eden*, 659 F.2d 1376, 1381 (9th Cir. 1981)). Rather, there must be a  
15 "sufficient likelihood that the requested material is relevant to the offenses charged in the  
16 indictment, and the moving party must make a sufficient preliminary showing that the requested  
17 material contains admissible evidence regarding the offenses charged." *Id.* at 624 (citing *Nixon*,  
18 418 U.S. at 700).

19 Federal Rule of Criminal Procedure 17(c)(1) governs the production of documents and  
20 objects, and provides:

21 A subpoena may order the witness to produce any books, papers, documents, data, or  
22 other objects the subpoena designates. The court may direct the witness to produce  
23 the designated items in court before trial or before they are to be offered in evidence.  
24 When the items arrive, the court may permit the parties and their attorneys to inspect  
25 all or part of them.

26 Although Rule 17 is not a discovery device, it may be used to obtain evidentiary materials. *Sellers*,  
275 F.R.D. at 622 (citing *Nixon*, 418 U.S. at 689, 699-700). Leave of court is required for a pretrial  
subpoena under Rule 17(c)(1) in criminal proceedings. *Id.* at 623. Granting a pretrial subpoena  
under Rule 17(c)(1) is "committed to the sound discretion of the trial court since the necessity for  
the subpoena most often turns upon a determination of factual issues." *Nixon*, 418 U.S. at 702.

## II. Discussion

Estes seeks personnel information about Madhu Karup, a law enforcement officer employed by Amtrak who was involved in Estes' arrest. Estes argues that the subpoena is necessary because "the requested information is critical to Mr. Estes in terms of impeachment but also to revealing possible bias and motives at play." Doc. #31 at 2. The United States argues that "the Brady/Giglio doctrine does not require the government to disclose neutral, irrelevant, speculative or inculpatory evidence." Doc. #30 at 3 (citing *United States v. Stinson*, 647 F.3d 1196, 1208 (9th Cir. 2011)).

In *United States v. Henthorn*, the Ninth Circuit considered a defendant's request for federal prosecutors to produce "the personnel files of all law enforcement witnesses whom it intends to call at the trial . . . for evidence of perjurious conduct or other like dishonesty, in camera, to determine if those portions of the officers' personnel files ought to be made available to defense counsel for impeachment purposes." 931 F.2d 29, 30 (9th Cir. 1991). The court held that "the government has a duty to examine personnel files upon a defendant's request for their production." *Id.* at 31. The court rejected the assertion that it is the defendant's burden to make an initial showing of materiality, adding that "[t]he obligation to examine the files arises by virtue of the making of a demand for their production. However, following that examination, the files need not be furnished to the defendant or the court unless they contain information that is or may be material to the defendant's case." *Id.*

This District has held that when a criminal defendant requests a law enforcement officer's personnel files, the government is entitled to "review the file and disclose to the defense materials therein relevant to the impeachment of testifying officers . . . because evidence reflecting negatively on a Government witness's credibility constitutes a species of *Brady* material." *United States v. Booth*, No. 2:08-cv-0283, 2011 WL 6139062, at \*3 (D. Nev. Dec. 9, 2011) (citing *Henthorne*, 931 F.2d at 30-31). "If the United States is unsure as to the impeachment value of certain information, it must submit it for *in camera* review." *Id.* The government might later be found to have violated *Brady* for improperly withholding certain documents, but courts nonetheless do not require the

1 government to disclose all personnel records without a showing of relevance, admissibility, and  
2 specificity. *Id.*

3 The Court has reviewed Estes' application for a subpoena and finds that Estes has not met  
4 his burden of establishing relevancy, admissibility, and specificity. Estes' proposed subpoena seeks  
5 "[a]ll documents regarding citizen complaints, files containing information regarding performance  
6 and disciplinary issues, written or verbal reprimands, suspensions, codes of conduct, internal  
7 investigations and all reports or documents pertaining to criminal and civil law suits including  
8 forfeiture, civil rights violations filed against or in regards to Amtrak employee Madhu Karup."  
9 Although there appears to be no dispute that Karup was involved in Estes' arrest, Estes has not  
10 identified any reason to believe that information in his personnel records is relevant to the arrest  
11 such that they should be compelled now rather than through the standard *Brady* and *Giglio* process  
12 if Karup is called as a witness at trial.<sup>2</sup> Thus, Estes' conclusory allegations about relevance and  
13 admissibility amount to little more than a fishing expedition and are insufficient to establish that  
14 pretrial production of the officers' personnel records is necessary at this point. *Sellers*, 275 F.R.D.  
15 at 623-24. A review of *Brady* materials for disclosure of relevant documents to defense counsel  
16 may be appropriate, however, if and when the officers are identified as witnesses who will testify at  
17 trial. *Booth*, 2011 WL 6139062, at \*3 (ordering a review of personnel files "relevant to the  
18 impeachment of *testifying officers*").

### 19 **III. Conclusion**

20 IT IS THEREFORE ORDERED that Estes' Application for the Issuance of a Subpoena  
21 (Doc. #24) is DENIED.

22 IT IS SO ORDERED.

23 DATED this 30th day of September, 2015

24   
25 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE

26 <sup>2</sup> The United States represents that it sent a *Henthorn* request to Amtrak, which "advised the Government that there are not any *Henthorn* issues regarding Detective Kurup." Doc. #30 at 3.